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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,683	01/24/2002	Nicholas G. Duffield	003493.00359	9999

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BANNER & WITCOFF LTD.,
ATTORNEYS FOR AT & T CORP
1001 G STREET, N.W.
ELEVENTH STREET
WASHINGTON, DC 20001-4597

EXAMINER

ENG, DAVID Y

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,683

Applicant(s)

DUFFIELD ET AL.

Examiner

DAVID Y. ENG

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/6/2002.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

A new title and a new abstract which are more aptly descriptive of the invention claimed (see claims 37, 38 and 10 for example) are required.

Claims 1-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Scope of claims is not clear. It is not clear what the apparatus tries to accomplish. It is not clear what the result is by processing the probabilistic parameter sampled traffic information, attribute and data element. No meaningful result or network management is seen.

There is no clear meaningful relationship between the steps of independent and dependent claims. For example, how would claims 2-4 and 6-9 affect step b of parent claim 1 in determining whether to sample the object in accordance with a probabilistic parameter? More example, the scope of claim 5 is not clear if the at least one attribute is not identified. Another example, claims 1 and 10 are as if they are independent from each other. No relationship between the steps of the two claims is seen. Claims 11-19 have similar defect. Applicants are requested to identify the support of each claims in the specification. The term and phrase used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms and phrase may be ascertainable by reference to the description. Rule 1.75d1.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-38 are rejected under 35 U.S.C. 102(a) as being anticipated by Torres (6,725,263).

See at least the title, the abstract, Figures 1-2 and the description thereof in Torres. Torres teaches an apparatus for managing a data network comprising a data interface (280) and a processor (220). The court held that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). “[Apparatus claims cover what a device is, not what a device does.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647. See MPEP 2114. Torres meets all the structural limitations.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.


Claims 1-36 and 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spencer (USP 5,197,002).

With respect to claims 1 and 39, see the abstract and Figures 1, 4 and 5 in Spencer. Spencer teaches an apparatus (billing system 19) for managing a data

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network (14) comprising a data interface and a processor (Figure 5). The billing system of Spencer receives objects (billing information of customer) having attribute and data element (customer ID and usage information, for example, or other information in order to generate a billing statement) and process the received objects to generate a billing statement.

Spencer did not disclose how the billing information is sampled or processed in accordance with a probabilistic parameter. It would have been obvious to a person of ordinary skill in the art to use an algorithm for processing customers' billing statement dependent on the business decision of he service provider.



DAVID Y. ENG
PRIMARY EXAMINER